

## **2013 DRAFTING REQUEST**

### **Bill**

Received: **9/9/2013** Received By: **mshovers**  
Wanted: **As time permits** Same as LRB:  
For: **John Nygren (608) 266-2343** By/Representing: **Nels**  
May Contact: Drafter: **mshovers**  
Subject: **Tax, Individual - dedct/sbtrct** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Rep.Nygren@legis.wisconsin.gov**  
Carbon copy (CC) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Index the college savings account deduction; add penalties for improper withdrawals; allow carry forwards

---

### **Instructions:**

See attached. Various changes to Ed Vest II, in s. 71.05 (6) (b) 32.

---

### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 9/20/2013			_____			
/P1	mshovers 10/3/2013	wjackson 9/23/2013	jfrantze 9/23/2013	_____	lparisi 9/23/2013		State Tax
/P2	mshovers 10/17/2013	wjackson 10/4/2013	jmurphy 10/4/2013	_____	srose 10/4/2013		State Tax
/1	mshovers	wjackson	jmurphy	_____	sbasford		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/23/2013	10/17/2013	10/18/2013	_____	10/18/2013		Tax
/2		wjackson	jfrantze	_____	srose	lparisi	State
		10/23/2013	10/23/2013	_____	10/23/2013	10/23/2013	Tax

FE Sent For:

<END>

10-31-2013  
("1/2")

see  
attached

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/2		wjackson	jfrantze	_____	srose		State
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&lt;END&gt;

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Vers. Drafted

Reviewed

10/17/2013

Typed

10/18/2013

Proofed

Submitted

10/18/2013

Jacketed

Required

Tax

FE Sent For:

12 MES 10/23/13

12 W/LJ 10/23

*[Signature]*  
<END>  
10/23

**Bill**

**Subject: Tax, Individual - deduct/sbtrct**

Extra Copies:

Carbon copy (CC) to:

**YES**

**Rep.Nygren@legis.wisconsin.gov**

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9/20/2013

/P1 mshovers  
10/3/2013

wjackson  
9/23/2013

jfrantze  
9/23/2013

lparisi  
9/23/2013

State  
Tax

wjackson  
10/4/2013

jmurphy  
10/4/2013

srose  
10/4/2013

State  
Tax

1 NES 10/17/13  
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1 WLj 10/17  
jm sk 10/18

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**<END>**



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Extra Copies:

Submit via email: YES

Requester's email: Rep.Nygren@legis.wisconsin.gov

Carbon copy (CC) to:

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No specific pre topic given

## Topic:

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## Instructions:

See attached. Various changes to Ed Vest II, in s. 71.05 (6) (b) 32.

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	9/20/2013						
/P1		wjackson	jfrantze		lparisi		State
		9/23/2013	9/23/2013		9/23/2013		Tax

FE Sent For:

10/3/13

1/2 Wly 10/4

<END>

10/4

10/4

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 Wanted: As time permits Same as LRB:  
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## Topic:

Index the college savings account deduction; add penalties for improper withdrawals; allow carry forwards

## Instructions:

See attached. Various changes to Ed Vest II, in s. 71.05 (6) (b) 32.

## Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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1/? mshovers

181 MES 9/20/13 9/23

FE Sent For:

<END>

**Shovers, Marc**

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**From:** Rude, Nels  
**Sent:** Friday, September 06, 2013 2:25 PM  
**To:** Shovers, Marc  
**Subject:** College Savings Program Legislation

*allow*  
Marc- Rep. Nygren would like to draft legislation to accomplish the following goals: protect college savings accounts from creditors, allow excess contributions to be carry-forwarded to future years, adjust the deduction to reflect the Consumer Price Index, require contributions to be made by April 15<sup>th</sup> instead of the current December 31<sup>st</sup> date, and require taxpayers to add-back to taxable income deductions taken for amounts not applied to Qualified Expenses in future years. We believe the attached language will accomplish these goals.

Also, please put a rush on this draft as we are hoping to move the bill this fall.

Thanks!

Nels



**Nels Rude**

Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89<sup>th</sup> Assembly District  
309 East, State Capitol  
608.267.2371  
[nels.rude@legis.wi.gov](mailto:nels.rude@legis.wi.gov)

*index this for inflation*

## Suggested Language

### Appendix 1:

**16.641(7)(a) of the statutes is hereby amended to read in its entirety as follows**

(a) An account established ~~A beneficiary's right to qualified withdrawals~~ under this section is not subject to garnishment, lien, levy, attachment, sale, execution or other process of law.

### Appendix 2: Extension of contribution deadline.

**71.05 (6)(b) 32 of the statutes is hereby amended to read**

Any amount ~~paid into~~ contributed in any year to a college savings account, as described in s. 16.641, not later than April 15<sup>th</sup> of the succeeding year of the due date of such taxpayer's State income tax return, including extensions, whichever is later, by the owner of the account or by a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary, if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew; calculated as follows:

### Appendix 3: Adjust the deduction to reflect annual inflation increases.

**71.05 (6)(b) 32 (a) of the statutes is hereby amended to read**

An amount equal to ~~not more than \$3,000 per beneficiary~~ the maximum annual deductible amount, by each taxpayer who is a contributor, or \$1,500 half such deductible amount by each taxpayer contributor who is married and files separately; ~~to an account for each year to which the claim relates, except that the total amount for which a deduction may be claimed under this subdivision and under subd. 33., per beneficiary by any claimant may not exceed \$3,000 each year, or \$1,500 each year by any claimant who is married and files separately. In the case of a married couple, the total deduction under this subdivision and under subd. 33., per beneficiary by the married couple may not exceed \$3,000 each year. In the case of divorced parents, the total deduction under this subdivision and under subd. 33., per beneficiary by the married or formerly married couple, may not exceed the maximum annual deductible amount \$3,000, and the maximum amount that may be deducted by each former spouse is half such amount \$1,500, unless the divorce judgment specifies a different division of the \$3,000 maximum annual deductible amount that may be claimed by each former spouse. In this subdivision the maximum annual deductible amount means the amount so contributed to each account and for each year shall not exceed: (i) \$3,000 per beneficiary for taxable years before 2014 and (ii) for 2014 and each year thereafter \$3,000 per beneficiary, as adjusted annually by the Department of Revenue by multiplying the amount in subsection (i) of this section by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending October 31, 2013. As used in this subsection, "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price Index for all Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.~~

Any amounts contributed to an account in excess of the annual deductible amount may be carried forward to future years and claimed as deduction not to exceed the annual deductible amount until such amounts have been so deducted.

#### Appendix 4: recapture of non-qualified withdrawals

**71.05 (6)(a) 26 of the statutes is hereby created to read:**

For taxable years beginning after December 31, 2012, (i) the earnings portion of any distribution received by any person from a college savings account, as described in s. 16.641, resulting in a penalty as provided by 26 USC 529 (C)(6) and (ii) principal amounts of such distributions previously claimed as a deduction under 71.05 (1)(6)(b) 32 to the extent such distributions are either (a) a withdrawal resulting in a penalty as provided by 26 USC 529 (C)(6) or (b) constitute a rollover to another qualified tuition program.

**(2)** (intro.) DUTIES OF THE BOARD. The board shall do all of the following:

**(a)** Except as provided in s. 16.255, establish and administer a college savings program that allows an individual, trust, legal guardian, or entity described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover tuition, fees, and the costs of room and board, books, supplies, and equipment required for the enrollment or attendance of a beneficiary at an eligible educational institution, as defined under 26 USC 529.

**(e)** Promulgate rules to implement and administer this section, including rules that determine whether a withdrawal from a college savings account is a qualified or nonqualified withdrawal, as defined under 26 USC 529, and that impose more than a de minimis penalty, as defined under 26 USC 529, for nonqualified withdrawals.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3189/P1  
MES:.....

Wij  
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

O-note

WANTED  
MON. 9/23

gen

of

1

AN ACT ...; relating to: indexing for inflation, and making other changes to, the

2

college savings plan income tax deduction,

↑

*Analysis by the Legislative Reference Bureau*

in

Under current law, there is a college tuition and expenses program, commonly referred to as "EdVest I," under which a contributor may purchase "tuition units" that can be used to pay qualified educational costs on behalf of a beneficiary. The purchase of the units is limited to parents, grandparents, aunts, uncles, legal guardians, trusts created on behalf of a beneficiary, or individuals purchasing units for their own use. Contributions made to an account set up under the program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew. ✓

in

great-grandparents,

is

Also, under current law, there exists a college savings program, commonly referred to as "EdVest II," under which anyone may open an account for a prospective student, regardless of the contributor's relationship to the beneficiary. Individuals may open accounts for themselves, and a prospective student may be the beneficiary of more than one college savings account. Contributions made to an account set up under this program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew. ✓

An authorized contributor to an EdVest I or EdVest II account who is not the owner of the account may claim a tax deduction for his or her contribution, subject to the current law limitations, if the claimant is the parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary.

Current law authorizes an income tax deduction for amounts contributed to both EdVest I and EdVest II by a divorced or legally separated parent of a child. The deduction may be claimed without regard to whether the child is his or her dependent. The total annual deduction under these two programs, per beneficiary, claimed by married parents who file jointly or separately, or by the divorced or legally separated parents of a child, may not exceed \$3,000. The total annual deduction under these two programs, per beneficiary, claimed by a married person who files separately may not exceed \$1,500 per claimant. The total annual deduction under these two programs, per beneficiary, claimed by a formerly married couple may not exceed a total of \$3,000, or \$1,500 per claimant, except that the former couple's divorce judgment may specify a different division of the \$3,000 maximum that may be claimed by each former spouse. ✓

For taxable years beginning after December 31, 2013, this bill indexes for inflation the maximum amount of contributions that may be deducted under (an) EdVest I and EdVest II account. <sup>5</sup> ✓

With regard to an EdVest II account, the bill authorizes deductions, generally, that are made on or before April 15 of the taxable year after the taxable year to which the deduction relates. If someone contributes to an EdVest II account more than the maximum amount that may be deducted, the bill allows the taxpayer to carry forward the excess amount contributed to future taxable years. ✓

Under current law, a beneficiary's right to qualified withdrawals from an EdVest II account is not subject to garnishment, attachment, execution, or other process of law. Under this bill, an EdVest II account is not subject to garnishment, lien, levy, attachment, execution, or other process of law. ✓

Under current law, the college savings <sup>program</sup> board, which is part of the department of administration, is required to promulgate rules for, and administer, the EdVest II program, including rules to determine whether a withdrawal from such an account is a qualified or nonqualified withdrawal under the Internal Revenue Code, and impose more than a minimal penalty for nonqualified withdrawals. Under this bill, an individual who receives a nonqualified withdrawal is required to add the amount of the withdrawal to his or her federal adjusted gross income for the year in which he or she received the nonqualified withdrawal. ✓

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.



*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 16.641 (7) (a) of the statutes is amended to read:

16.641 (7) (a) ~~A beneficiary's right to qualified withdrawals~~ An account established under this section is not subject to garnishment, lien, levy, attachment, execution or other process of law.

History: 1999 a. 44; 2001 a. 7, 38; 2011 a. 32 s. 76; Stats. 2011 s. 16.641.

**SECTION 2.** 71.05 (6) (a) 26. of the statutes is created to read:

71.05 (6) (a) 26. The amount of a nonqualified withdrawal, as described under s. 16.641 (2) (e), in the year in which such a withdrawal is received.

**SECTION 3.** 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

71.05 (6) (b) 32. (intro.) An amount paid into a college savings account, as described in s. 16.641, on or before ~~not later than~~ the 15th day of the 4th month beginning after the close of a taxpayer's taxable year to which this subtraction relates, subject to any applicable extension under s. 71.03 (7), by the owner of the account or by a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary, if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew; calculated as follows:

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; 2013 a. 19, 20; s. 13.92 (1) (bm) 2.

**SECTION 4.** 71.05 (6) (b) 32. a. of the statutes is amended to read:

71.05 (6) (b) 32. a. Except as otherwise provided in this subdivision, an amount equal to not more than \$3,000 per beneficiary, by each contributor, or \$1,500 by each contributor who is married and files separately, to an account for each year

1 to which the claim relates, except that the total amount for which a deduction may  
2 be claimed under this subdivision and under subd. 33., per beneficiary by any  
3 claimant may not exceed \$3,000 each year, or \$1,500 each year by any claimant who  
4 is married and files separately. In the case of a married couple, the total deduction  
5 under this subdivision and under subd. 33., per beneficiary by the married couple  
6 may not exceed \$3,000 each year. In the case of divorced parents, the total deduction  
7 under this subdivision and under subd. 33., per beneficiary by the formerly married  
8 couple, may not exceed \$3,000, and the maximum amount that may be deducted by  
9 each former spouse is \$1,500, unless the divorce judgment specifies a different  
10 division of the \$3,000 maximum that may be claimed by each former spouse. For  
11 taxable years beginning after December 31, 2013, the dollar amounts in this  
12 subdivision paragraph <sup>Subd. 32. a.</sup> and the dollar amounts in subd. 33. a., shall be increased  
13 each year by a percentage equal to the percentage change between the U.S. consumer  
14 price index for all urban consumers, U.S. city average, for the month of October of  
15 the previous year and the U.S. consumer price index for all urban consumers, U.S.  
16 city average, for the month of October 2011, as determined by the federal department  
17 of labor, except that the adjustment may occur only if the resulting amount is greater  
18 than the corresponding amount that was calculated for the previous year. Each  
19 amount that is revised under this <sup>Subd. 32. a.</sup> subdivision paragraph and under subdivision  
20 <sup>Subd.</sup> paragraph 33. a. shall be rounded to the nearest multiple of \$10 if the revised amount  
21 is not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount  
22 shall be increased to the next higher multiple of \$10. The department of revenue  
23 shall annually adjust the changes in dollar amounts required under this subdivision  
24 <sup>Subd. 32. a.</sup> paragraph and incorporate the changes into the income tax forms and instructions.  
25 Any amount that is paid into an account under this <sup>Subd. 32. a.</sup> subdivision that exceeds the

(STET)

1 maximum amount <sup>that</sup> which may be subtracted under this subdivision may be carried STET  
2 forward to the next taxable year <sup>and</sup> and thereafter, subject to the limitations in this  
3 subdivision <sup>STET</sup>

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; 2013 a. 19, 20; s. 13.92 (1) (bm) 2.

4 **SECTION 5. Initial applicability.**

5 (1) The treatment of section 71.05 (6) (a) 26. ✓ and (b) 32. (intro.) ✓ and a. of the  
6 statutes first applies to taxable years beginning on January 1, 2014.

7 (END)

D-note

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3189/?dn

MES.../....

9 WY

Date

Rep. Nygren:

Please review this draft very carefully to ensure it meets your intent. Some of the instructions in the predrafted materials you submitted did not make sense to me. For example, the predrafted s. 71.05 (6) (b) 32. a. seemed to disengage EdVest I from EdVest II for no apparent reason, and struck the dollar amounts in that statute only to reinsert the same dollar amounts later. My understanding is that EdVest I, in s. 71.05 (6) (b) 33. is not used very much, but there are still some accounts that are active, so I believe that the treatment of s. 71.05 (6) (b) 32. a. is consistent with your intent and will work with current law more effectively. After talking with Nels in your office, it seemed to us that your intent was to index the amounts in s. 71.05 (6) (b) 32. for inflation. The predrafted materials did not seem to do this, but the bill indexes those amounts for inflation consistent with other current law provisions.

Not all of the predrafted materials related to created s. 71.05 (6) (a) 26. may be necessary. For example, the add back of earnings in an account for which a penalty has been imposed may not be needed because current law s. 71.05 (6) (b) 31. prohibits an individual who has made a nonqualified withdrawal from claiming a subtraction for any increase in value of an EdVest II account. As for the other amount that is to be added back to federal adjusted gross income under the predrafted material in created s. 71.05 (6) (a) 26., I'm not sure what item "(ii)" refers to; is the language I created consistent with your intent? Currently, as I described in the analysis, the college savings board is required to promulgate rules that impose more than a minimum penalty for a nonqualified withdrawal, although I'm not sure what those penalties are. See s. 16.641 (2) (e). If you'd like, I'd be happy to contact the college savings board in DOA and find out what penalties they impose under current law for a nonqualified withdrawal.

M. Shovers

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

INS  
3-1

Section #. 16.641 (7) (title) of the statutes is amended to read:

(CS) 2

lien, levy

16.641 (7) (title) EXEMPTION FROM GARNISHMENT, ATTACHMENT AND EXECUTION; SECURITY FOR  
LOAN.

History: 1999 a. 44; 2001 a. 7, 38; 2011 a. 32 s. 76; Stats. 2011 s. 16.641.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3189/P1dn  
MES:wlj:jf

September 23, 2013

Rep. Nygren:

Please review this draft very carefully to ensure it meets your intent. Some of the instructions in the predrafted materials you submitted did not make sense to me. For example, the predrafted s. 71.05 (6) (b) 32. a. seemed to disengage EdVest I from EdVest II for no apparent reason, and struck the dollar amounts in that statute only to reinsert the same dollar amounts later. My understanding is that EdVest I, in s. 71.05 (6) (b) 33. is not used very much, but there are still some accounts that are active, so I believe that the treatment of s. 71.05 (6) (b) 32. a. is consistent with your intent and will work with current law more effectively. After talking with Nels in your office, it seemed to us that your intent was to index the amounts in s. 71.05 (6) (b) 32. for inflation. The predrafted materials did not seem to do this, but the bill indexes those amounts for inflation consistently with other current law provisions.

Not all of the predrafted materials related to created s. 71.05 (6) (a) 26. may be necessary. For example, the addback of earnings in an account for which a penalty has been imposed may not be needed because current law s. 71.05 (6) (b) 31. prohibits an individual who has made a nonqualified withdrawal from claiming a subtraction for any increase in value of an EdVest II account. As for the other amount that is to be added back to federal adjusted gross income under the predrafted materials in created s. 71.05 (6) (a) 26., I'm not sure what item "(ii)" refers to; is the language I created consistent with your intent? Currently, as I described in the analysis, the College Savings Program Board is required to promulgate rules that impose more than a minimum penalty for a nonqualified withdrawal, although I'm not sure what those penalties are. See s. 16.641 (2) (e). If you'd like, I'd be happy to contact the college savings board in DOA and find out what penalties they impose under current law for a nonqualified withdrawal.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

**Shovers, Marc**

---

**From:** Rude, Nels  
**Sent:** Wednesday, September 25, 2013 3:07 PM  
**To:** Shovers, Marc  
**Subject:** Fwd: Eric Petersen  
**Attachments:** Eric Petersen

Here is the clients contact info. Please contact him directly to clarify.

thanks!

Sent from my U.S. Cellular© Smartphone

----- Original message -----

Subject: Eric Petersen

From: Angie Baker <[angie.baker@capitolconsultants.net](mailto:angie.baker@capitolconsultants.net)>

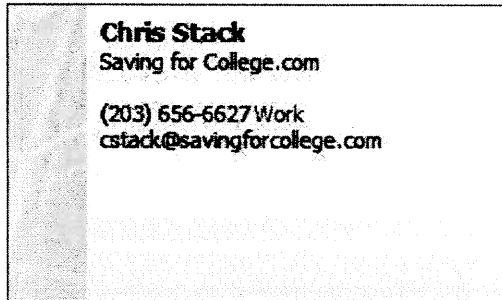
To: "[Nels.Rude@legis.wisconsin.gov](mailto:Nels.Rude@legis.wisconsin.gov)" <[Nels.Rude@legis.wisconsin.gov](mailto:Nels.Rude@legis.wisconsin.gov)>

CC:

**Shovers, Marc**

---

**From:** Angie Baker <angie.baker@capitolconsultants.net>  
**Sent:** Wednesday, September 25, 2013 2:31 PM  
**To:** Rude, Nels  
**Subject:** Eric Petersen  
**Attachments:** Chris Stack.vcf



cell:  
203-  
247-5471

Nels,  
Eric asked me to forward you this contact information.

---

This email has been scanned by the Boundary Defense for Email Security System. For more information please visit <http://www.apptix.com/email-security/antispam-virus>

---



10/3/13

Instructions  
from  
Chris Stack

what is the "earnings portion"?  
principal? gain?

#### Appendix 4: recapture of non-qualified withdrawals

71.05 (6)(a) 26 of the statutes is hereby created to read:

For taxable years beginning after December 31, 2012, (i) the earnings portion of any distribution received by any person from a college savings account, as described in s. 16.641, resulting in a penalty as provided by 26 USC 529 (C)(6) and (ii) principal amounts of such distributions previously claimed as a deduction under 71.05 (1)(6)(b) 32 to the extent such distributions are either (a) a withdrawal resulting in a penalty as provided by 26 USC 529 (C)(6) or (b) constitute a rollover to another qualified tuition program.

why? a rollover is not a taxable event  
under 26 USC 529 C (3)(c)i

True: This add back for a  
rollover deviates from  
federal law

any amount  
withdrawn that  
not used for  
a qualified purpose  
results in a penalty  
→ was previously claimed  
as a deduction  
and is

## Shovers, Marc

**From:** Chris Stack <cstack@savingforcollege.com>  
**Sent:** Thursday, October 03, 2013 1:06 PM  
**To:** Shovers, Marc  
**Cc:** Rude, Nels  
**Subject:** RE: WI legislation on 529 plans  
**Attachments:** taxdeductioncomparison.docx

Marc – Again – my apologies for not connecting. Telemarketing calls filled my office phone voice mailbox without my knowledge and thus I was unaware that you even tried to reach me. I have not been in my office for over two weeks traveling so I have been difficult to reach under any circumstance. I am sure you are busy as well & thus I have not been successful reaching you the past few days so let me attempt to respond to your email here.

As I understand what is being sought is to simply conform the Wisconsin statutes to nearly every other state that offers an up-front state tax deduction.

To put things in context, Wisconsin is apparently 1 of only 4 states that offers such a deduction but then does not mandate recapture in taxable income - funds that are withdrawn from a Wisconsin college savings account and not applied to qualified expenses in such year. Thus, while 8 states have no income tax leaving 42, of which 7 offer no deduction leaving 35 that offer some type of deduction. Of those 35 only 4, including WI, do not require such funds so deducted be applied to post-secondary educational expenses. Further, of the 35, the great majority require recapture if those funds are transferred to some other college savings program where recapture is more difficult to monitor. (see the attached) Thus, the amendment of the statute to require recapture of such deduction is sought. ) ?

The current WI statute that you cite below was likely enacted prior to federal tax law being modified so that the program no longer promulgates rules to address non-qualified distributions:

**IRS releases new guidance for 529 distribution reporting** - (December 10, 2001) - The IRS has released Notice 2001-81, providing guidance on implementing certain changes made to section 529 by the 2001 EGTRRA tax cuts. The most significant change described in Notice 2001-81 is that 529 plans will not have to verify the use of distributions after 2001. This means that a program can simply pay out a distribution upon request, without requiring documentation. Of course, it may take some time for many of 529 plans to jettison its current procedures, particularly in states where the state income tax, transaction charges, or distribution waiting periods depend on the characterization of a withdrawal as qualified or non-qualified.

Thus, there are 3 separate implications of a 529 withdrawal not being applied toward college costs. 1) Are the earnings taxable or tax-free, 2) does a penalty apply if not tax-free & 3) should any deduction taken be recaptured back into taxable income

The determination as to whether the amounts on deposit used are to be applied tax-free & penalty-free is now & has been for some time (since 2001) the responsibility of the account owner – not the 529 program. Section 16.641 (2) (e) empowers the Board to impose a penalty but it is not operative as it is not consistent with Section 529 of the IRC. Any penalty originally was paid to the 529 program but now it is paid to the IRS. Why? Ifc not tax-free is it?

The matter of the recapture of a deduction taken is related but is a separate matter. That is what to be addressed in the proposed legislation as I understand it. Thus the suggested language below seems to accomplish that:

**71.05 (6)(a) 26 of the statutes is hereby created to read:**

For taxable years beginning after December 31, 2012, (i) the earnings portion of any distribution received by any person from a college savings account, as described in s. 16.641, resulting in a penalty as provided by 26 USC 529 (C)(6) and (ii) principal amounts of such distributions previously claimed as a deduction under 71.05 (1)(6)(b) 32 to the extent such distributions are either (a) a withdrawal resulting in a penalty as provided by 26 USC 529 (C)(6) or (b) constitute a rollover to another qualified tuition program. 2 why? penalty? not a taxable event and a 529

I don't know how much revenue is to be gained to the State through this provision but it will serve to make the statutes consistent with the intent as I understand it.

Thank you for your consideration – I look forward to speaking with you later this afternoon.

---

**From:** Shovers, Marc [mailto:Marc.Shovers@legis.wisconsin.gov]  
**Sent:** Wednesday, October 02, 2013 5:16 PM  
**To:** cstack@savingforcollege.com  
**Cc:** Rude, Nels  
**Subject:** WI legislation on 529 plans

Hi Chris:

I'm an attorney with the Legislative Reference Bureau in Wisconsin and I'm working on a bill for State Representative John Nygren; I believe you've also been working on this bill. The representative's aide, Nels Rude, thought that you might be able to clarify for me what add back provisions in s. 71.05 (6) (a) of the Wisconsin statutes that you'd like created in the bill. Nels also indicated that you were familiar with the federal penalties for nonqualified withdrawals, and how those penalties may have superseded the Wisconsin statute in this area, s. 16.641 (2) (e), which seems to address this issue. The Wisconsin statute requires the College Savings Board to:

16.641(2)(e)

(e) Promulgate rules to implement and administer this section, including rules that determine whether a withdrawal from a college savings account is a qualified or nonqualified withdrawal, as defined under 26 USC 529, and that impose more than a de minimis penalty, as defined under 26 USC 529, for nonqualified withdrawals..

I've tried to call you a couple of times to discuss this, but I got your voicemail. Unfortunately, the outgoing message said your mail box was full so I couldn't leave you a message. I would appreciate it if you could please call me when you have a chance so we can discuss this legislation. Thanks for your help.

Marc

Marc Shovers  
Managing Attorney  
Legislative Reference Bureau  
608-266-0129  
[marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

**Shovers, Marc**

---

**From:** Rude, Nels  
**Sent:** Wednesday, September 25, 2013 11:46 AM  
**To:** Shovers, Marc  
**Subject:** College Savings Draft

Hey Marc- The draft looks good except for the provision dealing with the recapture of deduction taken for other use or rollovers. Please see a response to your comments below.

*"Not all of the pre-drafted materials related to created s. 71.05 (6) (a) 26. may be necessary. For example, the add-back of earnings in an account for which a penalty has been imposed may not be needed because current law s. 71.05 (6) (b) 31. prohibits an individual who has made a nonqualified withdrawal from claiming a subtraction [from federal adjusted gross income] for any increase in value of an EdVest II account. As for the other amount that is to be added back to federal adjusted gross income under the pre-drafted materials in created s. 71.05 (6) (a) 26., I'm not sure what item "(ii)" refers to; is the language I created consistent with your intent?"*

There is some confusion here and for the next point. This goes to the out-dated WI statutes since the federal tax law has changed since the enactment of s. 71.05 (6) (b) 31. **There is no penalty imposed by the Board, there is no increase in value in value of an EdVest II account included in federal taxable income & there is NO requirement that one give back or "recapture" back in their WI taxable income deductions taken for investments made but not used for college. This proposal is to 1) provide revenue to the State to off-set any attributed fiscal note to the overall proposal and 2) prohibit anyone from taking the deduction & then rolling into another plan.** By requiring amounts invested & deducted to stay in the WI plan +/- or be spent for intended purpose the WI plan will grow larger & become more efficient ultimately providing lower costs & increased benefits for WI residents.

*"Currently, as I described in the analysis, the College Savings Program Board is required to promulgate rules that impose more than a minimum penalty for a nonqualified withdrawal, although I'm not sure what those penalties are. See s. 16.641 (2) (e). If you'd like, I'd be happy to contact the college savings board in DOA and find out what penalties they impose under current law for a nonqualified withdrawal."*

See above. The Board does not impose a penalty because federal tax law changed & the penalty is administered at the federal level. Thus, this is not applicable.

Essentially, our goal is to ensure the state recaptures back taxable income deductions taken for investments made but not used for higher education and we would also like to prohibit anyone from taking a deduction and then rolling it into another plan.

If it is easier, I can put you in contact with the client/attorney we have been dealing with on this bill for further clarification.

Thanks!

Nels

**Nels Rude**

Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89<sup>th</sup> Assembly District  
309 East, State Capitol

608.267.2371

[nels.rude@legis.wi.gov](mailto:nels.rude@legis.wi.gov)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3189/F1  
MES:whf

P2

2

stays

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

WANTED:  
Friday

D-Note

regan

1 AN ACT *to amend* 16.641 (7) (title), 16.641 (7) (a), 71.05 (6) (b) 32. (intro.) and  
2 71.05 (6) (b) 32. a.; and *to create* 71.05 (6) (a) 26. of the statutes; **relating to:**  
3 indexing for inflation of, and making other changes to, the college savings plan  
4 income tax deduction.

***Analysis by the Legislative Reference Bureau***

Under current law, there is a college tuition and expenses program, commonly referred to as "EdVest I," under which a contributor may purchase "tuition units" that can be used to pay qualified educational costs in behalf of a beneficiary. The purchase of the units is limited to parents, grandparents, great-grandparents, aunts, uncles, legal guardians, trusts created in behalf of a beneficiary, or individuals purchasing units for their own use. Contributions made to an account set up under the program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

Also, under current law, there is a college savings program, commonly referred to as "EdVest II," under which anyone may open an account for a prospective student, regardless of the contributor's relationship to the beneficiary. Individuals may open accounts for themselves, and a prospective student may be the beneficiary of more than one college savings account. Contributions made to an account set up under this program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from

a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

An authorized contributor to an EdVest I or EdVest II account who is not the owner of the account may claim a tax deduction for his or her contribution, subject to the current law limitations, if the claimant is the parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary.

Current law authorizes an income tax deduction for amounts contributed to both EdVest I and EdVest II by a divorced or legally separated parent of a child. The deduction may be claimed without regard to whether the child is his or her dependent. The total annual deduction under these two programs, per beneficiary, claimed by married parents who file jointly or separately, or by the divorced or legally separated parents of a child, may not exceed \$3,000. The total annual deduction under these two programs, per beneficiary, claimed by a married person who files separately may not exceed \$1,500 per claimant. The total annual deduction under these two programs, per beneficiary, claimed by a formerly married couple may not exceed a total of \$3,000, or \$1,500 per claimant, except that the former couple's divorce judgment may specify a different division of the \$3,000 maximum that may be claimed by each former spouse.

For taxable years beginning after December 31, 2013, this bill indexes for inflation the maximum amount of contributions that may be deducted under EdVest I and EdVest II accounts.

With regard to an EdVest II account, the bill authorizes deductions, generally, that are made on or before April 15 of the taxable year after the taxable year to which the deduction relates. If someone contributes to an EdVest II account more than the maximum amount that may be deducted, the bill allows the taxpayer to carry forward the excess amount contributed to future taxable years.

Under current law, a beneficiary's right to qualified withdrawals from an EdVest II account is not subject to garnishment, attachment, execution, or other process of law. Under this bill, an EdVest II account is not subject to garnishment, lien, levy, attachment, execution, or other process of law.

(IRC) Under current law, the College Savings Program Board, which is part of the Department of Administration, is required to promulgate rules for, and administer, the EdVest II program, including rules to determine whether a withdrawal from such an account is a qualified or nonqualified withdrawal under the Internal Revenue Code, and impose more than a minimal penalty for nonqualified withdrawals. ~~Under this bill, an individual who receives a nonqualified withdrawal is required to add the amount of the withdrawal to his or her federal adjusted gross income for the year in which he or she received the nonqualified withdrawal.~~

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

INS  
ANK

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 16.641 (7) (title) of the statutes is amended to read:

2           16.641 (7) (title) EXEMPTION FROM GARNISHMENT, LIEN, LEVY, ATTACHMENT AND  
3 EXECUTION; SECURITY FOR LOAN.

4           **SECTION 2.** 16.641 (7) (a) of the statutes is amended to read:

5           16.641 (7) (a) ~~A beneficiary's right to qualified withdrawals~~ An account  
6 established under this section is not subject to garnishment, lien, levy, attachment,  
7 execution or other process of law.

8           **SECTION 3.** 71.05 (6) (a) 26. of the statutes is created to read:

9           ~~71.05 (6) (a) 26. The amount of a nonqualified withdrawal, as described under~~  
10 ~~s. 16.641 (2) (e), in the year in which such a withdrawal is received.~~

11           **SECTION 4.** 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

12           71.05 (6) (b) 32. (intro.) An amount paid into a college savings account, as  
13 described in s. 16.641, on or before the 15th day of the 4th month beginning after the  
14 close of a taxpayer's taxable year to which this subtraction relates, subject to any  
15 applicable extension under s. 71.03 (7), by the owner of the account or by a parent,  
16 grandparent, great-grandparent, aunt, or uncle of the beneficiary, if the beneficiary  
17 of the account is one of the following: the claimant; the claimant's child; the  
18 claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or  
19 nephew; calculated as follows:

20           **SECTION 5.** 71.05 (6) (b) 32. a. of the statutes is amended to read:



1           71.05 (6) (b) 32. a. ~~An~~ Except as otherwise provided in this subdivision, an  
2           amount equal to not more than \$3,000 per beneficiary, by each contributor, or \$1,500  
3           by each contributor who is married and files separately, to an account for each year  
4           to which the claim relates, except that the total amount for which a deduction may  
5           be claimed under this subdivision and under subd. 33., per beneficiary by any  
6           claimant may not exceed \$3,000 each year, or \$1,500 each year by any claimant who  
7           is married and files separately. In the case of a married couple, the total deduction  
8           under this subdivision and under subd. 33., per beneficiary by the married couple  
9           may not exceed \$3,000 each year. In the case of divorced parents, the total deduction  
10          under this subdivision and under subd. 33., per beneficiary by the formerly married  
11          couple, may not exceed \$3,000, and the maximum amount that may be deducted by  
12          each former spouse is \$1,500, unless the divorce judgment specifies a different  
13          division of the \$3,000 maximum that may be claimed by each former spouse. For  
14          taxable years beginning after December 31, 2013, the dollar amounts in this subd.  
15          32. a., and the dollar amounts in subd. 33. a., shall be increased each year by a  
16          percentage equal to the percentage change between the U.S. consumer price index  
17          for all urban consumers, U.S. city average, for the month of October of the previous  
18          year and the U.S. consumer price index for all urban consumers, U.S. city average,  
19          for the month of October 2011, as determined by the federal department of labor,  
20          except that the adjustment may occur only if the resulting amount is greater than  
21          the corresponding amount that was calculated for the previous year. Each amount  
22          that is revised under this subd. 32. a. and under subd. 33. a. shall be rounded to the  
23          nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised  
24          amount is a multiple of \$5, such an amount shall be increased to the next higher  
25          multiple of \$10. The department of revenue shall annually adjust the changes in

1 dollar amounts required under this subd. 32. a. and incorporate the changes into the  
2 income tax forms and instructions. Any amount that is paid into an account under  
3 this subdivision that exceeds the maximum amount that may be subtracted under  
4 this subdivision may be carried forward to the next taxable year, and thereafter,  
5 subject to the limitations in this subdivision.

6 **SECTION 6. Initial applicability.**

7 (1) The treatment of section 71.05 (6) (a) 26. and (b) 32. (intro.) and a. of the  
8 statutes first applies to taxable years beginning on January 1, 2014.

9 (END)

*P-note*

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3189/P2ins  
MES:wlj:jf

INS ANL

Under this bill, an individual who receives certain distributions from an EdVest II account must add certain amounts to his or her federal adjusted gross income (FAGI) for the year in which he or she receives the distribution. If the distribution results in the recipient of the distribution being penalized under the IRC, the amounts that must be added to FAGI are the amount of any gain that was generated by the account, and any amount that was not used for a qualified higher education expense to the extent that such an amount was previously claimed as a deduction from FAGI. Also under the bill, an amount in an EdVest II account that is distributed to an owner and rolled over into a qualified tuition program of another state must add the amount that is rolled over to FAGI.

INS 3-9

71.05 (6) (a) 26. For the taxable year in which a distribution is received, all of the following amounts distributed from a college savings account, as described in s. 16.641:

a. To the extent that the receipt of such amounts by the owner or beneficiary of the account results in a penalty as provided in 26 USC 529 (c) (6), any gain that was generated by any amounts deposited into the account.

*26.*  
\*\*\*\*NOTE: Does subd. par. a. meet your intent? Could this provision result in an owner or beneficiary who withdraws funds from an account add to FAGI the gain generated by the account, even if the person who makes the withdrawal may not be the same person who deposited the amount that resulted in the gain?

b. To the extent that the receipt of such amounts by the owner or beneficiary of the account results in a penalty as provided in 26 USC 529 (c) (6), any amount that was not used for qualified higher education expenses, as that term is defined in 26 USC 529 <sup>(e)(3)</sup> to the extent that the amount was previously claimed as a deduction under par. (b) 32.

c. Any amount that an owner rolls over, as described in 26 USC 529 (c) (3) (C) (i), into another state's qualified tuition program.

*26.*  
\*\*\*\*NOTE: Does subd. par. c. meet your intent? Is an owner the only person who may roll over an account, or may a beneficiary also do so?

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3189/P2dn

MES:wl:jf

stays

Date

Rep. Nygren:

I believe this version of the draft meets your intent, but I wonder if there might be some timing issues. For example, an individual who receives certain distributions must add them back into federal adjusted gross income for the taxable year in which the recipient receives the distribution but, for the add back to kick in, the bill requires that the distribution results in the recipient being penalized under the Internal Revenue Code. \*

I'm not sure how quickly a withdrawal for an unauthorized purpose results in a penalty under the IRC, so if the penalty is assessed after the individual files his or her return for the taxable year to which the penalty relates, perhaps the individual would have to file an amended return to perform the add back. You may wish to discuss this issue with the technical staff at the Department of Revenue to see if the bill needs to be changed. \*

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3189/P2dn  
MES:wlj:jm

October 4, 2013

Rep. Nygren:

I believe this version of the draft meets your intent, but I wonder if there might be some timing issues. For example, an individual who receives certain distributions must add them back into federal adjusted gross income for the taxable year in which the recipient receives the distribution but, for the addback to kick in, the bill requires that the distribution results in the recipient being penalized under the Internal Revenue Code.

I'm not sure how quickly a withdrawal for an unauthorized purpose results in a penalty under the IRC, so if the penalty is assessed after the individual files his or her return for the taxable year to which the penalty relates, perhaps the individual would have to file an amended return to perform the addback. You may wish to discuss this issue with the technical staff at the Department of Revenue to see if the bill needs to be changed.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

## Shovers, Marc

---

**From:** Rude, Nels  
**Sent:** Tuesday, October 08, 2013 12:43 PM  
**To:** Shovers, Marc  
**Subject:** FW: College Savings Draft

One final thing, we would like to remove the family requirement which states that contributions may be deducted only if the beneficiary of the account is the claimant, claimants child, grandchild, great-grandchild, niece or nephew. This would open it up to anyone.

Thank you.

-3/89

Nels

---

**From:** Rude, Nels  
**Sent:** Tuesday, October 08, 2013 12:29 PM  
**To:** Shovers, Marc  
**Subject:** College Savings Draft

Marc- In response to your note, I think we are comfortable with the bill as it is written as far as the timing issues you mention. I did send the bill and drafters note over to DOR to make sure it's Ok.

We do have concerns with the way Section 3 is drafted and would like to make the following changes:

~~Delete~~ subd. 26. a. ~~To the extent that the receipt of such amounts by the owner or beneficiary of the account results in a penalty as provided in 26 USC 529 (c) (6), any gain that was generated by any amounts deposited into the account.~~

First, a beneficiary cannot withdraw funds so that is not applicable. Second, since all gains belong to the owner – not the contributor – that point is not relevant. We are not concerned about gains as that is addressed in the federal taxable income which is the base for WI taxable income.

~~Modify~~ subd. 26. c. Any amount ~~that an owner rolls over, rolled over as described in 26 USC 529 (c) (3) (C) (i),~~ into another state's qualified tuition program as described in 26 USC 529 (c) (3) (C) (i).

Only an owner can roll over an account, but we feel it is better stated this way.

Finally, we want to ensure that this is applicable this year unless otherwise provided as it does in the final section.

Hopefully this resolves the remaining issues, but if not, it might be best to do a conference call between you, Mr. Stack and myself for further clarification.

Thanks

### Nels Rude

Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89<sup>th</sup> Assembly District  
309 East, State Capitol  
608.267.2371  
[nels.rude@legis.wi.gov](mailto:nels.rude@legis.wi.gov)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3189/P2  
MES:wjjm

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

today  
or Friday  
a.m.

Re-  
gan

1 AN ACT *to amend* 16.641 (7) (title), 16.641 (7) (a), 71.05 (6) (b) 32. (intro.) and  
2 71.05 (6) (b) 32. a.; and *to create* 71.05 (6) (a) 26. of the statutes; **relating to:**  
3 indexing for inflation of, and making other changes to, the college savings plan  
4 income tax deduction.

---

***Analysis by the Legislative Reference Bureau***

Under current law, there is a college tuition and expenses program, commonly referred to as "EdVest I," under which a contributor may purchase "tuition units" that can be used to pay qualified educational costs in behalf of a beneficiary. The purchase of the units is limited to parents, grandparents, great-grandparents, aunts, uncles, legal guardians, trusts created in behalf of a beneficiary, or individuals purchasing units for their own use. Contributions made to an account set up under the program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

Also, under current law, there is a college savings program, commonly referred to as "EdVest II," under which anyone may open an account for a prospective student, regardless of the contributor's relationship to the beneficiary. Individuals may open accounts for themselves, and a prospective student may be the beneficiary of more than one college savings account. Contributions made to an account set up under this program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from

a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

An authorized contributor to an EdVest I or EdVest II account who is not the owner of the account may claim a tax deduction for his or her contribution, subject to the current law limitations, if the claimant is the parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary.

Current law authorizes an income tax deduction for amounts contributed to both EdVest I and EdVest II by a divorced or legally separated parent of a child. The deduction may be claimed without regard to whether the child is his or her dependent. The total annual deduction under these two programs, per beneficiary, claimed by married parents who file jointly or separately, or by the divorced or legally separated parents of a child, may not exceed \$3,000. The total annual deduction under these two programs, per beneficiary, claimed by a married person who files separately may not exceed \$1,500 per claimant. The total annual deduction under these two programs, per beneficiary, claimed by a formerly married couple may not exceed a total of \$3,000, or \$1,500 per claimant, except that the former couple's divorce judgment may specify a different division of the \$3,000 maximum that may be claimed by each former spouse.

For taxable years beginning after December 31, 2013, this bill indexes for inflation the maximum amount of contributions that may be deducted under EdVest I and EdVest II accounts.

With regard to an EdVest II account, the bill authorizes deductions, generally, that are made on or before April 15 of the taxable year after the taxable year to which the deduction relates. If someone contributes to an EdVest II account more than the maximum amount that may be deducted, the bill allows the taxpayer to carry forward the excess amount contributed to future taxable years.

Under current law, a beneficiary's right to qualified withdrawals from an EdVest II account is not subject to garnishment, attachment, execution, or other process of law. Under this bill, an EdVest II account is not subject to garnishment, lien, levy, attachment, execution, or other process of law.

Under current law, the College Savings Program Board, which is part of the Department of Administration, is required to promulgate rules for, and administer, the EdVest II program, including rules to determine whether a withdrawal from such an account is a qualified or nonqualified withdrawal under the Internal Revenue Code (IRC), and impose more than a minimal penalty for nonqualified withdrawals.

Under this bill, an individual who receives certain distributions from an EdVest II account must add certain amounts to his or her federal adjusted gross income (FAGI) for the year in which he or she receives the distribution. If the distribution results in the recipient of the distribution being penalized under the IRC, the amounts that must be added to FAGI are ~~the amount of any gain that was generated by the account and any amount that was not used for a qualified higher education expense to the extent that such an amount was previously claimed as a deduction from FAGI.~~ <sup>the amount of any gain that was generated by the account and any amount that was not used for a qualified higher education expense to the extent that such an amount was previously claimed as a deduction from FAGI.</sup> Also under the bill, an amount in an EdVest II account that is distributed

NO

The bill also authorizes an owner or any other individual to claim a deduction for contributions to an EdVest II account that benefits any individual. (STET) = = =



*be added*

to an owner and rolled over into a qualified tuition program of another state must ~~add the amount that is rolled over~~ to FAGI.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 16.641 (7) (title) of the statutes is amended to read:

2       16.641 (7) (title) EXEMPTION FROM GARNISHMENT, LIEN, LEVY, ATTACHMENT AND  
3 EXECUTION; SECURITY FOR LOAN.

4       **SECTION 2.** 16.641 (7) (a) of the statutes is amended to read:

5       16.641 (7) (a) ~~A beneficiary's right to qualified withdrawals~~ An account  
6 established under this section is not subject to garnishment, lien, levy, attachment,  
7 execution or other process of law.

8       **SECTION 3.** 71.05 (6) (a) 26. of the statutes is created to read:

9       71.05 (6) (a) 26. For the taxable year in which a distribution is received, all of  
10 the following amounts distributed from a college savings account, as described in s.  
11 16.641:

12       a. ~~To the extent that the receipt of such amounts by the owner or beneficiary~~  
13 ~~of the account results in a penalty as provided in 26 USC 529 (c) (6), any gain that~~  
14 ~~was generated by any amounts deposited into the account.~~

\*\*\*\*NOTE: Does subd. 26. a. meet your intent? Could this provision result in an  
owner or beneficiary who withdraws funds from an account being required to add to FAGI  
the gain generated by the account, even if the person who makes the withdrawal may not  
be the same person who deposited the amount that resulted in the gain?

15       a, (b) To the extent that the receipt of such amounts by the owner or beneficiary  
16 of the account results in a penalty as provided in 26 USC 529 (c) (6), any amount that

1 ~~was~~ was not used for qualified higher education expenses, as that term is defined in 26  
2 USC 529 (e) (3), to the extent that the amount was previously claimed as a deduction  
3 under par. (b) 32.

4 *rolled over by an owner*  
b. c Any amount *that an owner rolls over*, as described in 26 USC 529 (c) (3) (C)(i)  
5 into another state's qualified tuition program.

\*\*\*NOTE: Does subd. 26. c. meet your intent? Is an owner the only person who may  
roll over an account, or may a beneficiary also do so?

6 SECTION 4. 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

7 71.05 (6) (b) 32. (intro.) An amount paid into a college savings account, as  
8 described in s. 16.641, on or before the 15th day of the 4th month beginning after the  
9 close of a taxpayer's taxable year to which this subtraction relates, subject to any  
10 applicable extension under s. 71.03 (7), by the owner of the account or by a parent,  
11 any other individual, for the benefit of any  
12 grandparent, great-grandparent, aunt, or uncle of the beneficiary, if the beneficiary  
13 of the account is one of the following: the claimant; the claimant's child; the  
14 claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or  
15 nephew, calculated as follows:

16 SECTION 5. 71.05 (6) (b) 32. a. of the statutes is amended to read:

17 71.05 (6) (b) 32. a. Except as otherwise provided in this subdivision, an  
18 amount equal to not more than \$3,000 per beneficiary, by each contributor, or \$1,500  
19 by each contributor who is married and files separately, to an account for each year  
20 to which the claim relates, except that the total amount for which a deduction may  
21 be claimed under this subdivision and under subd. 33., per beneficiary by any  
22 claimant may not exceed \$3,000 each year, or \$1,500 each year by any claimant who  
23 is married and files separately. In the case of a married couple, the total deduction  
under this subdivision and under subd. 33., per beneficiary by the married couple

1 may not exceed \$3,000 each year. In the case of divorced parents, the total deduction  
2 under this subdivision and under subd. 33., per beneficiary by the formerly married  
3 couple, may not exceed \$3,000, and the maximum amount that may be deducted by  
4 each former spouse is \$1,500, unless the divorce judgment specifies a different  
5 division of the \$3,000 maximum that may be claimed by each former spouse. For  
6 taxable years beginning after December 31, 2013, the dollar amounts in this subd.  
7 32. a., and the dollar amounts in subd. 33. a., shall be increased each year by a  
8 percentage equal to the percentage change between the U.S. consumer price index  
9 for all urban consumers, U.S. city average, for the month of October of the previous  
10 year and the U.S. consumer price index for all urban consumers, U.S. city average,  
11 for the month of October 2011, as determined by the federal department of labor,  
12 except that the adjustment may occur only if the resulting amount is greater than  
13 the corresponding amount that was calculated for the previous year. Each amount  
14 that is revised under this subd. 32. a. and under subd. 33. a. shall be rounded to the  
15 nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised  
16 amount is a multiple of \$5, such an amount shall be increased to the next higher  
17 multiple of \$10. The department of revenue shall annually adjust the changes in  
18 dollar amounts required under this subd. 32. a. and incorporate the changes into the  
19 income tax forms and instructions. Any amount that is paid into an account under  
20 this subdivision that exceeds the maximum amount that may be subtracted under  
21 this subdivision may be carried forward to the next taxable year, and thereafter,  
22 subject to the limitations in this subdivision.

23 **SECTION 6. Initial applicability.**

**(END)**

## Shovers, Marc

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**From:** Rude, Nels  
**Sent:** Monday, October 21, 2013 4:17 PM  
**To:** Shovers, Marc  
**Cc:** Schoenfeldt, Jeff  
**Subject:** College Savings Draft

Marc- Please add the underlined language below. We are hoping this will clarify that the amounts deducted are included back in WI taxable income, not the full account, if rolled into an out-of-state 529 plan after taking the deduction.

SECTION 3. 71.05 (6) (a) 26. of the statutes is created to read:

71.05 (6) (a) 26. For the taxable year in which a distribution is received, all of the following amounts distributed from a college savings account, as described in s.

16.641:

a. To the extent that the receipt of such amounts by the owner or beneficiary of the account results in a penalty as provided in 26 USC 529 (c) (6), any amount that was not used for qualified higher education expenses, as that term is defined in 26 USC 529 (e) (3), to the extent that the amount was previously claimed as a deduction under par. (b) 32.

b. Any amount rolled over by an owner into another state's qualified tuition program, as described in 26 USC 529 (c) (3) (C) (i) ), to the extent that the amount was previously claimed as a deduction under par. (b) 32.

We plan to send this out for co-sponsorship on Wednesday if you are able to get us a new draft that quickly.

Thanks much,

Nels

### Nels Rude

Office of State Representative John Nygren  
Co-Chair, Joint Committee on Finance  
89<sup>th</sup> Assembly District  
309 East, State Capitol  
608.267.2371  
[nels.rude@legis.wi.gov](mailto:nels.rude@legis.wi.gov)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3189/1

MES:wlj:jm

stays RMR

2013 BILL

WANTED:  
now

regen

1 AN ACT *to amend* 16.641 (7) (title), 16.641 (7) (a), 71.05 (6) (b) 32. (intro.) and  
2 71.05 (6) (b) 32. a.; and *to create* 71.05 (6) (a) 26. of the statutes; **relating to:**  
3 indexing for inflation of, and making other changes to, the college savings plan  
4 income tax deduction.

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*Analysis by the Legislative Reference Bureau*

Under current law, there is a college tuition and expenses program, commonly referred to as "EdVest I," under which a contributor may purchase "tuition units" that can be used to pay qualified educational costs in behalf of a beneficiary. The purchase of the units is limited to parents, grandparents, great-grandparents, aunts, uncles, legal guardians, trusts created in behalf of a beneficiary, or individuals purchasing units for their own use. Contributions made to an account set up under the program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

Also, under current law, there is a college savings program, commonly referred to as "EdVest II," under which anyone may open an account for a prospective student, regardless of the contributor's relationship to the beneficiary. Individuals may open accounts for themselves, and a prospective student may be the beneficiary of more than one college savings account. Contributions made to an account set up under this program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from

**BILL**

a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

An authorized contributor to an EdVest I or EdVest II account who is not the owner of the account may claim a tax deduction for his or her contribution, subject to the current law limitations, if the claimant is the parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary.

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Under current law, a beneficiary's right to qualified withdrawals from an EdVest II account is not subject to garnishment, attachment, execution, or other process of law. Under this bill, an EdVest II account is not subject to garnishment, lien, levy, attachment, execution, or other process of law.

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Under this bill, an individual who receives certain distributions from an EdVest II account must add certain amounts to his or her federal adjusted gross income (FAGI) for the year in which he or she receives the distribution. If the distribution results in the recipient of the distribution being penalized under the IRC, the amounts that must be added to FAGI are any amounts that were not used for a qualified higher education expense to the extent that such amounts were previously

# BILL

to the extent that such amounts <sup>was MES:whjgm</sup> ~~were~~ previously claimed as a deduction from FAAI

claimed as a deduction from FAGI. Also under the bill, an amount in an EdVest II account that is distributed to an owner and rolled over into a qualified tuition program of another state must be added to FAGI.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

~~For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.~~

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16.641 (7) (title) EXEMPTION FROM GARNISHMENT, LIEN, LEVY, ATTACHMENT AND

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**SECTION 2.** 16.641 (7) (a) of the statutes is amended to read:

16.641 (7) (a) ~~A beneficiary's right to qualified withdrawals~~ An account

established under this section is not subject to garnishment, lien, levy, attachment, execution or other process of law.

**SECTION 3.** 71.05 (6) (a) 26. of the statutes is created to read:

**71.05 (6) (a) 26.** For the taxable year in which a distribution is received, all of

the following amounts distributed from a college savings account, as described in s.

16.641:

a. To the extent that the receipt of such amounts by the owner or beneficiary of the account results in a penalty as provided in 26 USC 529 (c) (6), any amount that was not used for qualified higher education expenses, as that term is defined in 26 USC 529 (e) (3), to the extent that the amount was previously claimed as a deduction under par. (b) 32.

b. Any amount rolled over by an owner into another state's qualified tuition program, as described in 26 USC 529 (c) (3) (C) (i), <sup>to the extent that the</sup> amount was previously claimed as a deduction under par. (b) 32



## BILL

## SECTION 4

1           **SECTION 4.** 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

2           71.05 (6) (b) 32. (intro.) An amount paid into a college savings account, as  
3 described in s. 16.641, on or before the 15th day of the 4th month beginning after the  
4 close of a taxpayer's taxable year to which this subtraction relates, subject to any  
5 applicable extension under s. 71.03 (7), by the owner of the account or by a parent,  
6 grandparent, great-grandparent, aunt, or uncle of the beneficiary, if the any other  
7 individual, for the benefit of any beneficiary of the an account is one of the following:  
8 the claimant; the claimant's child; the claimant's grandchild; the claimant's  
9 great-grandchild; or the claimant's niece or nephew;, calculated as follows:

10          **SECTION 5.** 71.05 (6) (b) 32. a. of the statutes is amended to read:

11          71.05 (6) (b) 32. a. An Except as otherwise provided in this subdivision, an  
12 amount equal to not more than \$3,000 per beneficiary, by each contributor, or \$1,500  
13 by each contributor who is married and files separately, to an account for each year  
14 to which the claim relates, except that the total amount for which a deduction may  
15 be claimed under this subdivision and under subd. 33., per beneficiary by any  
16 claimant may not exceed \$3,000 each year, or \$1,500 each year by any claimant who  
17 is married and files separately. In the case of a married couple, the total deduction  
18 under this subdivision and under subd. 33., per beneficiary by the married couple  
19 may not exceed \$3,000 each year. In the case of divorced parents, the total deduction  
20 under this subdivision and under subd. 33., per beneficiary by the formerly married  
21 couple, may not exceed \$3,000, and the maximum amount that may be deducted by  
22 each former spouse is \$1,500, unless the divorce judgment specifies a different  
23 division of the \$3,000 maximum that may be claimed by each former spouse. For  
24 taxable years beginning after December 31, 2013, the dollar amounts in this subd.  
25 32. a., and the dollar amounts in subd. 33. a., shall be increased each year by a

**BILL**

1 percentage equal to the percentage change between the U.S. consumer price index  
2 for all urban consumers, U.S. city average, for the month of October of the previous  
3 year and the U.S. consumer price index for all urban consumers, U.S. city average,  
4 for the month of October 2011, as determined by the federal department of labor,  
5 except that the adjustment may occur only if the resulting amount is greater than  
6 the corresponding amount that was calculated for the previous year. Each amount  
7 that is revised under this subd. 32. a. and under subd. 33. a. shall be rounded to the  
8 nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised  
9 amount is a multiple of \$5, such an amount shall be increased to the next higher  
10 multiple of \$10. The department of revenue shall annually adjust the changes in  
11 dollar amounts required under this subd. 32. a. and incorporate the changes into the  
12 income tax forms and instructions. Any amount that is paid into an account under  
13 this subdivision that exceeds the maximum amount that may be subtracted under  
14 this subdivision may be carried forward to the next taxable year, and thereafter,  
15 subject to the limitations in this subdivision.

**SECTION 6. Initial applicability.**

17 (1) The treatment of section 71.05 (6) (a) 26. and (b) 32. (intro.) and a. of the  
18 statutes first applies to taxable years beginning on January 1, 2014.

19 (END)

**Parisi, Lori**

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**From:** Schoenfeldt, Jeff  
**Sent:** Wednesday, October 23, 2013 4:39 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3189/2 Topic: Index the college savings account deduction; add penalties for improper withdrawals; allow carry forwards

Please Jacket LRB -3189/2 for the ASSEMBLY.

**Barman, Mike**

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**From:** Shovers, Marc  
**Sent:** Thursday, October 31, 2013 10:54 AM  
**To:** Barman, Mike  
**Subject:** Fiscal Estimate for LRB -3189/2

Hi Mike:

Jenny from Rep. Nygren's office called and requested a fiscal estimate for this bill.

Thanks!

Marc